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The Bidding Law of the People's Republic of China [Revised]

中华人民共和国招标投标法【已被修订】

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Order of President of the People's Republic of China
(No. 21)

The Bidding Law of the People's Republic of China, as deliberated and adopted at the 17th Meeting of the Standing Committee of the Ninth National People's Congress on August 30, 1999, is hereby issued, and shall come into force on January 1, 2000.

President of the People's Republic of China Jiang Zemin
August 30, 1999

The Bidding Law of the People's Republic of China
(Adopted by the Standing Committee of the Ninth National People's Congress at the 11th Session on August 30, 1999)

中华人民共和国主席令
(第二十一号)

《中华人民共和国招标投标法》已由中华人民共和国第九届全国人民代表大会常务委员会第十一次会议于1999年8月30日通过，现予公布，自2000年1月1日起施行。

中华人民共和国主席 江泽民

1999年8月30日

中华人民共和国招标投标法

(1999年8月30日第九届全国人民代表大会常务委员会第十一次会议通过)

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Article 1 This law has been enacted for the purpose of regulating the activities of Invitation

第一条 为了规范招标投标活动，保护国家利益、社

to Bid and bidding, safeguarding the rights of the rights of the State, the social public and the parties concerned in the process of bidding, enhancing the economic performance, and ensuring the quality of projects.

Article 2 This law shall be applicable to the bidding activities within the territory of the People's Republic of China.

Article 3 Bidding shall be carried out for the following construction projects, including the survey, design, construction, supervision of the project, and the procurement of the important equipment, materials relevant to the construction of the project:

1. large projects of infrastructure facility or public utility that have a bearing on the social public interest and the safety of the general public;
 2. projects entirely or partially using state-owned funds or loans by the state;
 3. projects using loans of international organizations and foreign governments and aid funds.
- The specific scope and size criteria of the projects as mentioned in the previous paragraph shall be formulated by the department of development and planning of the State Council and other relevant departments of the State Council.

Where the scope of other projects that must be carried out through bidding is provided by laws or the regulations of the State Council, such laws and regulations shall remain applicable.

Article 4 As pertains to projects legally requiring bidding, no entity or individual evade bidding by any means including the dismembering of projects.

Article 5 The principles of openness, fairness, justice, honesty and credit-worthiness shall be applied to bidding activities.

Article 6 As pertains to projects legally requiring bidding, the bidding activities shall not to be subject to district or departmental restrictions. No entity or individual shall illegally restrict or exclude the participation of legal persons or other organizations beyond the region or industry in the bidding, nor illegally interfere with the bidding activities in any other means.

Article 7 The bidding activities and the parties concerned shall accept legally conducted supervision.

The relevant administrative supervision departments shall conduct supervision over the bidding activities and investigate illegal activities the bidding process.

The State Council shall stipulate the administrative supervision of bidding activities and division of authority of the relevant departments.

Chapter Two Invitation to Bid

Article 8 The term "tenderee" refers to a legal person or other organization that propose a project and put forth an Invitation to Bid.

Article 9 Where a bidding project is subject to examination and approval in accordance with the relevant provisions of the State, approval shall be obtained in advance.

A tenderee shall possess sufficient funds for the bidding project, or have definite resources of funds for the project, and shall truthfully state related facts in the bid-invitation documents.

Article 10 An Invitation to Bid shall be made through either public notices or special requests.

会公共利益和招标投标活动当事人的合法权益, 提高经济效益, 保证项目质量, 制定本法。

第二条 在中华人民共和国境内进行招标投标活动, 适用本法。

第三条 在中华人民共和国境内进行下列建设工程项目包括项目的勘察、设计、施工、监理以及与工程建设有关的重要设备、材料等的采购, 必须进行招标:

- (一) 大型基础设施、公用事业等关系社会公共利益、公众安全的项目;
- (二) 全部或者部分使用国有资金投资或者国家融资的项目;
- (三) 使用国际组织或者外国政府贷款、援助资金的项目。

前款所列项目的具体范围和规模标准, 由国务院发展计划部门会同国务院有关部门制订, 报国务院批准。

法律或者国务院对必须进行招标的其他项目的范围有规定的, 依照其规定。

第四条 任何单位和个人不得将依法必须进行招标的项目化整为零或者以其他任何方式规避招标。

第五条 招标投标活动应当遵循公开、公平、公正和诚实信用的原则。

第六条 依法必须进行招标的项目, 其招标投标活动不受地区或者部门的限制。任何单位和个人不得违法限制或者排斥本地区、本系统以外的法人或者其他组织参加投标, 不得以任何方式非法干涉招标投标活动。

第七条 招标投标活动及其当事人应当接受依法实施的监督。

有关行政监督部门依法对招标投标活动实施监督, 依法查处招标投标活动中的违法行为。

对招标投标活动的行政监督及有关部门的具体职权划分, 由国务院规定。

第二章 招标

第八条 招标人是依照本法规定提出招标项目、进行招标的法人或者其他组织。

第九条 招标项目按照国家有关规定需要履行项目审批手续的, 应当先履行审批手续, 取得批准。

招标人应当有进行招标项目的相应资金或者资金来源已经落实, 并应当在招标文件中如实载明。

第十条 招标分为公开招标和邀请招标。
公开招标, 是指招标人以招标公告的方式邀请不特定的法

"Public Invitation to Bid" refers to that the tenderer putting forth an invitation to unspecified legal persons or other organization to tender bids.

"Invitation to Bid by Request" refers to that the tenderer requesting specified legal persons or other organizations to tender bids.

Article 11 Invitation to Bid by Request may be used for both key national projects confirmed by the National Development Planning Department of the State Council and key local projects confirmed as unsuitable for public bidding by the People's Government of the province, autonomous region or municipality having been ratified by either the National Development Planning Department of the State Council or the People's Government of the province, autonomous region or municipality.

Article 12 The tenderer shall be entitled to independent selection of bidding agencies for the execution of bidding operations. No entity or individual shall in any way designate any bidding agency on behalf of the tenderer.

The tenderer who has the capacity to formulate Bid-invitation documents and organize bid evaluations may handle bidding operations on its own initiative. No entity or individual may compel the tenderer to entrust any bidding agencies with bidding operations.

For projects subject to bidding in which the tenderer chooses to handle the bidding operations, the tenderer shall report to the relevant administrative supervisory departments.

Article 13 The term "bidding agency" refers to the legally established social intermediary organizations, acting as agents in bidding operations and providing relevant services.

A bidding agency shall satisfy the conditions as mentioned below:

1. Bidding agency shall possess a place of business and funds for acting as agent in bidding operations;
2. Bidding agency shall consist of professionals capable of making Bid- invitation documents and organizing bid evaluations;
3. Bidding agency shall maintain archives of technical and economic experts that meet the requirements as mentioned in Article 37.3 of This law so as to serve the members of the bid evaluation committee.

Article 14 The State Council, or provincial, autonomous region, or municipal governments shall review the qualifications of the bidding agency that serves as the agent in bidding operations of construction projects. The state council administrative department in charge of construction shall, in conjunction with the appropriate department of the state council, formulate the specific plan for the examination and approval. The department in charge of the examination and approval of the qualifications of the bidding agencies engaged in other bidding operations shall be subject to the provisions of the State Council.

There shall not be any relationship of subordination or other interest between the bidding agency and the administrative departments or other organs of state power.

Article 15 A bidding agency shall handle bidding operations within the limit of authorization of the tenderer, and shall observe the provisions of This law concerning the tenderer.

Article 16 In cases of Public Bidding, the tenderer shall publish bidding notices. The bidding notices for projects that are subject to bidding shall be published in the newspapers, information networks or other mass media as designated by the State.

The bidding notices shall clearly set forth the title and address of the tenderer, the nature, quantity, place and time for execution of the bidding project, ways of obtaining Bid-invitation documents, etc..

Article 17 Where the Invitation to Bid by Request is used, the tenderer shall send invitations

人或者其他组织投标。

邀请招标，是指招标人以投标邀请书的方式邀请特定的法人或者其他组织投标。

第十一条 国务院发展计划部门确定的国家重点项目和省、自治区、直辖市人民政府确定的地方重点项目不适宜公开招标的，经国务院发展计划部门或者省、自治区、直辖市人民政府批准，可以进行邀请招标。

第十二条 招标人有权自行选择招标代理机构，委托其办理招标事宜。任何单位和个人不得以任何方式为招标人指定招标代理机构。

招标人具有编制招标文件和组织评标能力的，可以自行办理招标事宜。任何单位和个人不得强制其委托招标代理机构办理招标事宜。

依法必须进行招标的项目，招标人自行办理招标事宜的，应当向有关行政监督部门备案。

第十三条 招标代理机构是依法设立、从事招标代理业务并提供相关服务的社会中介组织。

招标代理机构应当具备下列条件：

- (一) 有从事招标代理业务的营业场所和相应资金；
- (二) 有能够编制招标文件和组织评标的相应专业力量；
- (三) 有符合本法第三十七条第三款规定条件、可以作为评标委员会成员人选的技术、经济等方面的专家库。

第十四条 从事工程建设项目招标代理业务的招标代理机构，其资格由国务院或者省、自治区、直辖市人民政府的建设行政主管部门认定。具体办法由国务院建设行政主管部门会同国务院有关部门制定。从事其他招标代理业务的招标代理机构，其资格认定的主管部门由国务院规定。

招标代理机构与行政机关和其他国家机关不得存在隶属关系或者其他利益关系。

第十五条 招标代理机构应当在招标人委托的范围内办理招标事宜，并遵守本法关于招标人的规定。

第十六条 招标人采用公开招标方式的，应当发布招标公告。依法必须进行招标的项目的招标公告，应当通过国家指定的报刊、信息网络或者其他媒介发布。

招标公告应当载明招标人的名称和地址、招标项目的性质、数量、实施地点和时间以及获取招标文件的办法等事项。

第十七条 招标人采用邀请招标方式的，应当向三个

to no less than three specified legal persons or other organizations that are capable of handling bidding operations and with good credit standing.

The invitation shall clearly set forth the items as mentioned in Article 16.2 of This law.

Article 18 The tenderer may, according to the specific condition of the bidding project, request the tenderer provide relevant credentials and evidence of performance in the bidding notices or invitations, and examine the qualifications of the potential tenderers. Where there are other provisions by the State concerning the qualifications of the tenderer, such provisions shall be applied.

No tenderer shall restrain or "squeeze out" potential tenderers by imposing unreasonable conditions, nor shall it discriminate against the potential tenderers.

Article 19 The tenderer shall make Bid-invitation documents according to the features and requirements of the bidding project. The Bid-invitation documents shall include all substantial requirements and all key terms for the conclusion of contracts, including: the project's technical requirements, the criteria for examination of the tenderer, the requirements for the bid price and the standard of evaluation of the bid, etc.

Where there are state provisions concerning the technology and criteria of the bidding project, the tenderer shall clearly specify corresponding provisions in the Bid-invitation documents.

If necessary, the tenderer shall properly divide the bidding project into sections or phases, and provide clear information on the sections and phases in the Bid-invitation documents.

Article 20 The Bid-invitation documents shall neither postulate nor set forth a specific producer or supplier or other contents favoring or excluding potential tenderers.

Article 21 The tenderer may, according to the specific condition of the project, arrange for on-site inspections by potential tenderers.

Article 22 The tenderer shall not disclose to any other person the title, quantity of the potential tenderers that have obtained Bid- invitation documents or any other information that may affect fair competition.

Where there is a minimum bid, it shall be kept confidential.

Article 23 In cases where the tenderer has to make necessary clarifications or modifications to the Bid-invitation documents, he shall inform all receivers of the Bid-invitation documents in writing within 15 days prior to the deadline of the submission of bidding documents, as mentioned in the Bid-invitation documents.

Article 24 The tenderer shall specify a reasonable period of time for the tenderer to formulate bid documents. However, in cases of projects legally subject to bidding, the period of time from the first day the Bid-invitation documents are sent out to the deadline for the tenderers' submission of bidding documents shall not be shorter than twenty days.

Chapter III Bidding

Article 25 A tenderer shall be a legal person or other organization that makes a response to a bid and participates in the competition for a bid.

Where individuals are permitted to participate in the bidding of projects of scientific research, the provisions of This law, as concern the tenderer, shall apply to the individual tenderers.

Article 26 The tenderer shall be capable of undertaking the bidding project and shall satisfy the qualifications as provided by state regulations or the Bid-invitation documents concerning the qualifications of the tenderer.

以上具备承担招标项目的能力、资信良好的特定的法人或者其他组织发出投标邀请书。

投标邀请书应当载明本法第十六条第二款规定的事项。

第十八条 招标人可以根据招标项目本身的要求,在招标公告或者投标邀请书中,要求潜在投标人提供有关资质证明文件和业绩情况,并对潜在投标人进行资格审查;国家对投标人的资格条件有规定的,依照其规定。

招标人不得以不合理的条件限制或者排斥潜在投标人,不得对潜在投标人实行歧视待遇。

第十九条 招标人应当根据招标项目的特点和需要编制招标文件。招标文件应当包括招标项目的技术要求、对投标人资格审查的标准、投标报价要求和评标标准等所有实质性要求和条件以及拟签订合同的主要条款。国家对招标项目的技术、标准有规定的,招标人应当按照其规定在招标文件中提出相应要求。

招标项目需要划分标段、确定工期的,招标人应当合理划分标段、确定工期,并在招标文件中载明。

第二十条 招标文件不得要求或者标明特定的生产供应者以及含有倾向或者排斥潜在投标人的其他内容。

第二十一条 招标人根据招标项目的具体情况,可以组织潜在投标人踏勘项目现场。

第二十二条 招标人不得向他人透露已获取招标文件的潜在投标人的名称、数量以及可能影响公平竞争的有关招标投标的其他情况。

招标人设有标底的,标底必须保密。

第二十三条 招标人对已发出的招标文件进行必要的澄清或者修改的,应当在招标文件要求提交投标文件截止时间至少十五日前,以书面形式通知所有招标文件收受人。该澄清或者修改的内容为招标文件的组成部分。

第二十四条 招标人应当确定投标人编制投标文件所需要的合理时间;但是,依法必须进行招标的项目,自招标文件开始发出之日起至投标人提交投标文件截止之日止,最短不得少于二十日。

第三章 投标

第二十五条 投标人是响应招标、参加投标竞争的法人或者其他组织。

依法招标的科研项目允许个人参加投标的,投标的个人适用本法有关投标人的规定。

第二十六条 投标人应当具备承担招标项目的能力;国家有关规定对投标人资格条件或者招标文件对投标人资格条件有规定的,投标人应当具备规定的资格条件。

Article 27 The tenderer shall formulate the bidding documents in accordance with the requirements as set forth in the Bid-invitation documents. The bidding documents shall respond to the substantial requirements and conditions as provided in the Bid-invitation documents.

If the bidding project is a construction project, the Bid-invitation documents shall include such contents as the resume and performances of the person in charge of the project and technicians to be dispatched and the machinery and equipment to be used in executing the bidding project.

Article 28 The tenderer shall send the bidding documents to the place of bidding prior to the deadline for the submission of the bidding documents. The tenderee shall sign to acknowledge the receipt of the bidding documents and keep them without opening.

If there are less than three tenderers, the tenderee shall make a new Invitation to Bid in accordance with This law. The tenderee shall reject bidding documents arriving prior to the deadline.

Article 29 The tenderer may supplement, modify, or revoke the Bid- invitation documents, in which case, the tenderer shall inform all tenderers prior to the deadline for the submission of the bidding documents. The supplements and modifications shall become a part of the Bid- invitation documents.

Article 30 The tenderer shall, in accordance with the actual situation of the project as stated in the bidding documents, clearly state any intent of sub-contracting non-essential or non-critical parts of the project.

Article 31 A consortium of two or more legal persons or other organizations may be formed to participate in the bidding competition as one tenderer.

All parties to the consortium shall be equipped with the corresponding capabilities for undertaking the bidding project. All parties shall satisfy the qualifications as provided in the rules of the state or in the Bid-invitation documents concerning the qualifications of the tenderer. The level of credit standing of a consortium made up of entities of a same profession shall be that of the entity with the lowest credit standing.

All parties to the consortium shall make an agreement, specifying the work to be undertaken and responsibilities, and shall submit said agreement, together with the bidding documents, to the tenderee. In the event the consortium wins the bid, all parties to the consortium shall make a contract together with the tenderee, and shall assume several and joint liability for the bidding project.

The tenderee shall not force the tenderers to form consortiums in the bidding, nor shall it constrain the competition of the tenderers.

Article 32 Tenderers shall not collude with each other in setting bidding prices, nor shall they exclude other tenderers from fair competition and harm the lawful rights and interests of the tenderee and other tenderers.

Tenderers shall not collude with the tenderee in injuring the interests of the state, general public and other people.

Tenderers shall be forbidden to win any bid by offering any bribe to the tenderee or any member of the bid-evaluation committee.

Article 33 Tenderers shall not participate in the bidding competition by offering a price lower than the cost, nor shall they attempt to win the bid in the name of other persons or through other fraudulent means.

第二十七条 投标人应当按照招标文件的要求编制投标文件。投标文件应当对招标文件提出的实质性要求和条件作出响应。

招标项目属于建设施工的，投标文件的内容应当包括拟派出的项目负责人与主要技术人员的简历、业绩和拟用于完成招标项目的机械设备等。

第二十八条 投标人应当在招标文件要求提交投标文件的截止时间前，将投标文件送达投标地点。招标人收到投标文件后，应当签收保存，不得开启。投标人少于三个的，招标人应当依照本法重新招标。

在招标文件要求提交投标文件的截止时间后送达的投标文件，招标人应当拒收。

第二十九条 投标人在招标文件要求提交投标文件的截止时间前，可以补充、修改或者撤回已提交的投标文件，并书面通知招标人。补充、修改的内容为投标文件的组成部分。

第三十条 投标人根据招标文件载明的项目实际情况，拟在中标后将中标项目的部分非主体、非关键性工作分包的，应当在投标文件中载明。

第三十一条 两个以上法人或者其他组织可以组成一个联合体，以一个投标人的身份共同投标。

联合体各方均应当具备承担招标项目的相应能力；国家有关规定或者招标文件对投标人资格条件有规定的，联合体各方均应当具备规定的相应资格条件。由同一专业的单位组成的联合体，按照资质等级较低的单位确定资质等级。联合体各方应当签订共同投标协议，明确约定各方拟承担的工作和责任，并将共同投标协议连同投标文件一并提交招标人。联合体中标的，联合体各方应当共同与招标人签订合同，就中标项目向招标人承担连带责任。招标人不得强制投标人组成联合体共同投标，不得限制投标人之间的竞争。

第三十二条 投标人不得相互串通投标报价，不得排挤其他投标人的公平竞争，损害招标人或者其他投标人的合法权益。

投标人不得与招标人串通投标，损害国家利益、社会公共利益或者他人的合法权益。

禁止投标人以向招标人或者评标委员会成员行贿的手段谋取中标。

第三十三条 投标人不得以低于成本的报价竞标，也不得以他人名义投标或者以其他方式弄虚作假，骗取中标。

Article 34 The opening of the bid shall be carried out in public at the time of the deadline for submission of bidding documents, as mentioned in the Bid-invitation documents. The place for opening bids shall be the place specified in the Bid-invitation documents.

Article 35 The bid opening shall be presided by the tenderee with the participation of all tenderers.

Article 36 Before opening a bid, the seal-integrity of bidding documents shall be examined by the tenderers or the representatives chosen by the tenderers. A public notary agency entrusted by the tenderee may also examine the seal-integrity of the documents and notarize the situation. After confirmation of the validity of the sealing, the person in charge shall open the bidding documents in public and announce the names or titles of the tenderers, the prices of the bids and other main contents of the bidding documents.

The tenderee shall, at the time of bid opening, open all the bidding documents received prior to the deadline of submission and read in public.

The process of bid opening shall be recorded kept in the archives for future reference.

Article 37 A legally established bid evaluation committee shall be responsible for bid evaluation.

For projects legally subject to bidding, the bid evaluation committee shall be composed of representatives of the tenderee and experts in the technology and economics concerned. The number of members shall be an odd number larger than 5, of whom no less than two thirds of all the members shall be experts in the technology or economics concerned.

An expert as mentioned in the previous paragraph shall have an experience of no less than eight years in relevant fields and have a senior professional title or be of an equivalent level, and shall be selected by the tenderee from the lists of experts provided by the relevant departments of the State Council, the relevant departments of the provincial, autonomous region, or municipal government, or from the list of related experts found within the expert archives of the tenderee-representative institutions. The random selection method may be used in an ordinary bidding project, while for special projects, the method to be used shall be subject to the decision of the tenderee.

Those with direct interest relationships to the tenderer shall not serve on the bid evaluation committee for the relevant bidding projects. Those who are already members of the committee shall be removed.

The name list of the members of the bid evaluation committee shall be kept confidential before the winning of bid is determined.

Article 38 The tenderee shall take necessary measures to ensure that bid evaluations are conducted in a strictly confidential manner.

No entity or individual shall unlawfully interfere with or influence the process or result of any bid evaluation.

Article 39 The bid evaluation committee may demand tenderers to make clarifications or explanations as to the ambiguities in the bidding documents, but such clarifications or explanations shall not go beyond the limits as mentioned in the bidding documents or alter the substantial contents of the bidding documents.

Article 40 The bid evaluation committee shall make evaluations and comparisons to the bidding documents according to the criteria and methods as specified in the Bid-invitation documents. Where a base price is set in the bidding documents, reference shall be made to the base price. After the completion of bid evaluation, the bid evaluation committee shall submit a written report to the tenderee and make recommendations as to candidates for the winning bid.

第三十四条 开标应当在招标文件确定的提交投标文件截止时间的同一时间公开进行；开标地点应当为招标文件中预先确定的地点。

第三十五条 开标由招标人主持，邀请所有投标人参加。

第三十六条 开标时，由投标人或者其推选的代表检查投标文件的密封情况，也可以由招标人委托的公证机构检查并公证；经确认无误后，由工作人员当众拆封，宣读投标人名称、投标价格和投标文件的其他主要内容。

招标人在招标文件要求提交投标文件的截止时间前收到的所有投标文件，开标时都应当当众予以拆封、宣读。

开标过程应当记录，并存档备查。

第三十七条 评标由招标人依法组建的评标委员会负责。

依法必须进行招标的项目，其评标委员会由招标人的代表和有关技术、经济等方面的专家组成，成员人数为五人以上单数，其中技术、经济等方面的专家不得少于成员总数的三分之二。

前款专家应当从事相关领域工作满八年并具有高级职称或者具有同等专业水平，由招标人从国务院有关部门或者省、自治区、直辖市人民政府有关部门提供的专家名册或者招标代理机构的专家库内的相关专业的专家名单中确定；一般招标项目可以采取随机抽取方式，特殊招标项目可以由招标人直接确定。

与投标人有利害关系的人不得进入相关项目的评标委员会；已经进入的应当更换。

评标委员会成员的名单在中标结果确定前应当保密。

第三十八条 招标人应当采取必要的措施，保证评标在严格保密的情况下进行。

任何单位和个人不得非法干预、影响评标的过程和结果。

第三十九条 评标委员会可以要求投标人对投标文件中含义不明确的内容作必要的澄清或者说明，但是澄清或者说明不得超出投标文件的范围或者改变投标文件的实质性内容。

第四十条 评标委员会应当按照招标文件确定的评标标准和方法，对投标文件进行评审和比较；设有标底的，应当参考标底。评标委员会完成评标后，应当向招标人提出书面评标报告，并推荐合格的中标候选人。

招标人根据评标委员会提出的书面评标报告和推荐的中标候选人确定中标人。招标人也可以授权评标委员会直接确

The winner of the bid shall be determined by the tenderee in accordance with the written evaluation report by the committee and the candidates proposed by the committee. The winning candidate may also be directly determined by the committee under the authorization of the tenderee.

Where there are special provisions by the State Council concerning a specific bidding project, such provisions shall apply.

Article 41 The winning candidate shall meet at least one condition as mentioned below:

- 1) The candidate is to the maximum extent able to satisfy the bid evaluation criteria as specified in each clause of the bid-invitation documents.
- 2) the tenderer is able to satisfy the substantial requirements, while providing the lowest bid (excluding below-cost bids).

Article 42 The bid evaluation committee may decide to reject all bids if it finds that no bid is able to meet the requirements stipulated in the Bid-invitation documents.

If all the bids on a project legally subject to bidding are rejected, the tenderee shall again invite bidding, as stipulated in This law.

Article 43 Before the determination of the bid winner, no negotiations may be conducted between the tenderee and any tenderers concerning the substantial contents such as bid price, plans, ect.

Article 44 Members of the bid evaluation committee shall perform their duties in an objective and fair manner, observe professional ethics, and assume individual responsibility for their evaluation opinions.

No member of the bid evaluation committee may have private contact with any tenderer or accept any money, property or other benefits from the tenderer.

No member of the bid evaluation committee nor any person engaged in the bid evaluation may disclose any information concerning bid evaluations and comparisons, nominations of bid winner candidates, or any other information related to the bid evaluation.

Article 45 After the determination of the bid winner, the tenderee shall issue a bid winning notice to the winner, and at the same time inform all the other tenderers of the result. The bid-winning notice shall be of legal effect to the tenderee and bid winner.

If the tenderee changes the result of bid winning or the bid winner rejects the bid project after the notice has been sent out, the tenderee or tenderer shall be held legal liable.

Article 46 A written contract shall be concluded between the tenderee and bid winner within 30 days after the issuance of the bid-winning notice according to the Invitation to Bid and bidding documents. The tenderee and bid winner shall not conclude other agreements deviating from any substantial provision of the contract.

Where the Bid-invitation documents require the bid winner pay a contract implementation security, the bid winner shall make such payments.

Article 47 For a project which is legally subject to bidding, the tenderee shall submit a written report concerning the bidding to the relevant supervisory administrative departments within 15 days of the determination of the bid winner.

Article 48 The bid winner shall perform duties and complete the bidding project, as specified in the contract. The bid winner shall neither assign the project to any other person nor dismember the project and then assign the project in part to other persons.

The bid winner may, according to the provisions of the contract or the consent of the tenderee, subcontract to other persons parts of the project that are not vital or key to the

定中标人。

国务院对特定招标项目的评标有特别规定的，从其规定。

第四十一条 中标人的投标应当符合下列条件之一：

(一) 能够最大限度地满足招标文件中规定的各项综合评价标准；

(二) 能够满足招标文件的实质性要求，并且经评审的投标价格最低；但是投标价格低于成本的除外。

第四十二条 评标委员会经评审，认为所有投标都不符合招标文件要求的，可以否决所有投标。

依法必须进行招标的项目的所有投标被否决的，招标人应当依照本法重新招标。

第四十三条 在确定中标人前，招标人不得与投标人就投标价格、投标方案等实质性内容进行谈判。

第四十四条 评标委员会成员应当客观、公正地履行职务，遵守职业道德，对所提出的评审意见承担个人责任。

评标委员会成员不得私下接触投标人，不得收受投标人的财物或者其他好处。

评标委员会成员和参与评标的有关工作人员不得透露对投标文件的评审和比较、中标候选人推荐情况以及与评标有关的其他情况。

第四十五条 中标人确定后，招标人应当向中标人发出中标通知书，并同时向所有未中标的投标人。

中标通知书对招标人和中标人具有法律效力。中标通知书发出后，招标人改变中标结果的，或者中标人放弃中标项目的，应当依法承担法律责任。

第四十六条 招标人和中标人应当自中标通知书发出之日起三十日内，按照招标文件和中标人的投标文件订立书面合同。招标人和中标人不得再行订立背离合同实质性内容的其他协议。

招标文件要求中标人提交履约保证金的，中标人应当提交。

第四十七条 依法必须进行招标的项目，招标人应当自确定中标人之日起十五日内，向有关行政监督部门提交招标投标情况的书面报告。

第四十八条 中标人应当按照合同约定履行义务，完成中标项目。中标人不得向他人转让中标项目，也不得将中标项目肢解后分别向他人转让。

中标人按照合同约定或者经招标人同意，可以将中标项目的部分非主体、非关键性工作分包给他人完成。接受分包

project.

The bid winner shall be responsible to the tenderee for the assigned part of the project, and the person who accepts the subcontracted part of the project shall take joint and several liabilities.

Chapter Five Legal Liabilities

Article 49 Those failing to conduct bidding for project legally subject to bidding, or evading bidding by means of dismemberment other means shall be ordered to make corrections, and may be imposed upon a fine of not less than 1/2% but not more than 1% of the total value of the contracted project. For a project wholly or partly funded by state funds, implementation may be suspended or the transfer of funds may be suspended. The person(s)-in-charge directly responsible for the unit and other persons who are held in direct responsibility shall be punished according to law.

Article 50 Any bidding agency disclosing information of materials relating to the bidding, in violation of This law, or conspiring with the tenderee or tenderer(s), so as to injure the lawful rights or interests of the state, the general public or any other persons, shall be subject to a fine of not less than 50,000 yuan but not more than 250,000 yuan RMB; the person-in-charge directly responsible for the entity or any other person who are held directly responsible shall be subject to a fine of not less than 5% but not more than 10% of the total amount of fine imposed upon the entity. Where any illegal gains have resulted, such gains shall be confiscated; under serious circumstances, the agency may be suspended or even be disqualified. If any violation of law constitutes a crime, violators shall be criminally prosecuted. Where losses have resulted, the agency shall make compensations. If the winning of the bid has been affected by any of the acts as mentioned in the previous paragraph, the bid shall be held invalid.

Article 51 In cases where the tenderee has been found guilty of restraint or exclusion of potential tenderers through unreasonable conditions, application of discriminatory treatment of tenderers, forcing tenderers to form consortiums, or restraining the competition among tenderers the tenderee shall be ordered to make corrections, and may be subject to a fine of not less than 10,000 yuan but not more than 50,000 yuan.

Article 52 Where the tenderee of a project legally subject to bidding has disclosed to other person(s) the name or title or quantity of potential tenderers or any other information that may affect the fair competition of the tenderers, including disclosing the minimum bid price, he shall be warned, and may at the same time be subject to a fine of not less than 10,000 yuan but not more than 100,000 yuan. The person- in-charge directly responsible for the entity or any other person who are held in direct responsibility shall be punished according to law. If any violation constitutes a crime, the violator shall be criminally prosecuted. If the winning of bid has been affected by any of the acts as mentioned in the previous paragraph, the bid shall be invalid.

Article 53 If the tenderer wins the bid by conspiring with the tenderers or with the tenderee or paying bribes to the tenderee or members of the bid evaluation committee, the bid shall be invalid, and the bid winner shall be subject to a fine of not less than 1/2% but not more than 1% of the total value of the bidding project. The person-in- charge directly responsible for the entity or any other person who are held directly responsible shall be subject to a fine of not less than 5% but not more than 10% of the total amount of fine imposed upon the entity. Where any illegal gains have resulted, such gains shall be confiscated; where the circumstance are serious, the tenderer shall be disqualified from participation in bidding for a term of 1 to 2 years for and shall be published in public notices, or be revoked of his business

的人应当具备相应的资格条件，并不得再次分包。

中标人应当就分包项目向招标人负责，接受分包的人就分包项目承担连带责任。

第五章 法律责任

第四十九条 违反本法规定，必须进行招标的项目而不招标的，将必须进行招标的项目化整为零或者以其他方式规避招标的，责令限期改正，可以处项目合同金额千分之五以上千分之十以下的罚款；对全部或者部分使用国有资金的项目，可以暂停项目执行或者暂停资金拨付；对单位直接负责的主管人员和其他直接责任人员依法给予处分。

第五十条 招标代理机构违反本法规定，泄露应当保密的与招标投标活动有关的情况和资料的，或者与招标人、投标人串通损害国家利益、社会公共利益或者他人合法权益的，处五万元以上二十五万元以下的罚款，对单位直接负责的主管人员和其他直接责任人员处单位罚款数额百分之五以上百分之十以下的罚款；有违法所得的，并处没收违法所得；情节严重的，暂停直至取消招标代理资格；构成犯罪的，依法追究刑事责任。给他人造成损失的，依法承担赔偿责任。前款所列行为影响中标结果的，中标无效。

第五十一条 招标人以不合理的条件限制或者排斥潜在投标人的，对潜在投标人实行歧视待遇的，强制要求投标人组成联合体共同投标的，或者限制投标人之间竞争的，责令改正，可以处一万元以上五万元以下的罚款。

第五十二条 依法必须进行招标的项目的招标人向他人透露已获取招标文件的潜在投标人的名称、数量或者可能影响公平竞争的有关招标投标的其他情况的，或者泄露标底的，给予警告，可以并处一万元以上十万元以下的罚款；对单位直接负责的主管人员和其他直接责任人员依法给予处分；构成犯罪的，依法追究刑事责任。前款所列行为影响中标结果的，中标无效。

第五十三条 投标人相互串通投标或者与招标人串通投标的，投标人以向招标人或者评标委员会成员行贿的手段谋取中标的，中标无效，处中标项目金额千分之五以上千分之十以下的罚款，对单位直接负责的主管人员和其他直接责任人员处单位罚款数额百分之五以上百分之十以下的罚款；有违法所得的，并处没收违法所得；情节严重的，取消其一年至二年内参加依法必须进行招标的项目的投标资格并予以公告，直至由工商行政管理机关吊销营业

license by the administration for industry and commerce. If any violation of law constitutes a crime, the tenderer shall be criminally prosecuted. If losses have been caused to other persons, the tenderer shall be responsible for making compensations.

Article 54 If the tenderer wins the bid by using another person's name or through other fraudulent means, the bid shall be invalid. If losses have been caused to any other person, he shall be responsible for making compensations. If any violation of this constitutes a crime, the tenderer shall be criminally prosecuted.

If the tenderer of a project legally subject to bidding commits as mentioned in the previous paragraph but does not constitute a crime, he shall be subject to a fine of not less than 1/2% but not more than 1% of the total value of the bidding project. The person-in-charge directly responsible for the entity or any other person who are held directly responsible shall be subject to a fine of not less than 5% but not more than 10% of the total amount of fine imposed upon the entity. Where any illegal gains have resulted, such gains shall be confiscated; where the circumstance are serious, the tenderer shall be disqualified from participation in bidding for a term of 1 to 3 years from participation in bidding and shall be published in public notices, or be subject to revocation of license by the administration for industry and commerce.

Article 55 For a project legally subject to bidding where the tenderer violates This law by negotiating with any tenderer about substantial contents of the bid such as the bid price or plan, he shall be warned, and the person-in-charge directly responsible for the entity or any other person who are held in direct responsibility shall be punished according to law. If the winning bid has been affected by any of the acts as mentioned in the previous paragraph, the bid shall be invalid.

Article 56 If any member of the bid evaluation committee accepts the property or other benefits of any tenderer, or any member of the bid evaluation committee or relevant worker engaged in the bid evaluation disclose information about the evaluation or comparison of bid, or the nomination of candidates for winning the bid or any other information about the bid evaluation, he shall be subject to a warning, confiscation of property accepted, and may be concurrently subject to a fine of not less than 3,000 yuan but not more than 50,000 yuan. Any member committing any of the acts as mentioned in the previous paragraph shall be disqualified and no longer be allowed to participate in the evaluation of any bid legally subject to bidding. If any of the acts constitute a crime, the violator shall be prosecuted.

Article 57 If the tenderer selects the bid winner beyond the range of candidates as legally recommended by the bid evaluation committee, or if the tenderer of a project legally subject to bidding selects the bid winner on his own initiative after all bids have been rejected by the bid evaluation committee, said bid shall be invalid; the tenderer shall be ordered to make corrections and may be subject to a fine of not less than 1/2% but not more than 1% of the total value of the bidding project. The person-in-charge directly responsible for the entity or any other person who are held in direct responsibility shall be punished according to law.

Article 58 Where the winner of a bid assigns the bidding project to another person or dismembers the project and then assigns it to other persons, or subcontracts any vital or key part of the project to other persons, or if the subcontractor further subcontracts his part, such assignments and subcontracts shall be invalid, and the persons who are held responsible shall be imposed upon a fine of not less than 5 but not more than 10 of the total value of the part assigned or subcontracted. Where any illegal gains have been incurred, such gains shall be confiscated. The persons responsible may also be ordered to suspend business for internal rectification. If the circumstances are serious, the business license of the person responsible may also be canceled by the administration for industry and commerce.

Article 59 Where a contract is not concluded between the tenderer and the bid winner as

执照; 构成犯罪的, 依法追究刑事责任。给他人造成损失的, 依法承担赔偿责任。

第五十四条 投标人以他人名义投标或者以其他方式弄虚作假, 骗取中标的, 中标无效, 给招标人造成损失的, 依法承担赔偿责任; 构成犯罪的, 依法追究刑事责任。

依法必须进行招标的项目的投标人有前款所列行为尚未构成犯罪的, 处中标项目金额千分之五以上千分之十以下的罚款, 对单位直接负责的主管人员和其他直接责任人员处单位罚款数额百分之五以上百分之十以下的罚款; 有违法所得的, 并处没收违法所得; 情节严重的, 取消其一年至三年内参加依法必须进行招标的项目的投标资格并予以公告, 直至由工商行政管理机关吊销营业执照。

第五十五条 依法必须进行招标的项目, 招标人违反本法规定, 与投标人就投标价格、投标方案等实质性内容进行谈判的, 给予警告, 对单位直接负责的主管人员和其他直接责任人员依法给予处分。前款所列行为影响中标结果的, 中标无效。

第五十六条 评标委员会成员收受投标人的财物或者其他好处的, 评标委员会成员或者参加评标的有关工作人员向他人透露对投标文件的评审和比较、中标候选人推荐以及与评标有关的其他情况的, 给予警告, 没收收受的财物, 可以并处三千元以上五万元以下的罚款, 对有所列违法行为的评标委员会成员取消担任评标委员会成员的资格, 不得再参加任何依法必须进行招标的项目的评标; 构成犯罪的, 依法追究刑事责任。

第五十七条 招标人在评标委员会依法推荐的中标候选人以外确定中标人的, 依法必须进行招标的项目在所有投标被评标委员会否决后自行确定中标人的, 中标无效。责令改正, 可以处中标项目金额千分之五以上千分之十以下的罚款; 对单位直接负责的主管人员和其他直接责任人员依法给予处分。

第五十八条 中标人将中标项目转让给他人的, 将中标项目肢解后分别转让给他人的, 违反本法规定将中标项目的部分主体、关键性工作分包给他人的, 或者分包人再次分包的, 转让、分包无效, 处转让、分包项目金额千分之五以上千分之十以下的罚款; 有违法所得的, 并处没收违法所得; 可以责令停业整顿; 情节严重的, 由工商行政管理机关吊销营业执照。

第五十九条 招标人与中标人不按照招标文件和中标

per with the Invitation to Bid and bidding documents, or if the tenderer and bid winner make an agreement deviating from the substance of the contract, they shall be ordered to make corrections, and may be subject to a fine of not less than 5 but not more than 10 of the total value of the bidding project.

Article 60 If the bid winner fails to perform the contract entered into with the tenderer, the guarantee money for implementation shall not be returned; if the losses caused to the tenderer exceed the guarantee money, he shall make compensations for the balance; if he has failed to pay guarantee money, he shall be responsible for making compensations for the losses of the tenderer.

If the failure of the bid winner to perform his contractual obligations is serious, he shall be disqualified from participating in bidding for a term of 2 to 5 years and his violations shall be published in public notices, up to and including the cancellation of his business by the administration for industry and commerce.

If the failure to perform the contract is caused by force majeure, the provisions as mentioned in the previous two paragraphs shall not apply.

Article 61 The administrative penalties as stipulated in this chapter shall be subject to the decision of the administrative department of supervision designated by the State Council, with the exception of the state organs already stipulated in This law for the executing penalties.

Article 62 Any entity violating This law by restricting or excluding legal persons or other organizations beyond its own geographical area or industry from participating in bidding, designating bidding agencies for the tenderer, forcing the tenderer to entrust bidding agencies for participation in bidding, or interfering with the bidding in any other means, shall be ordered to make corrections; the person-in-charge directly responsible for the entity or any other persons who are held in direct responsibility shall be warned, demerited, or given a special demerit; if the circumstances are serious, the person shall be punished by demotion, removal from office, or dismissal from work.

If any one commits any of the acts as mentioned in the previous paragraph, he shall be punished in accordance with the provisions of the previous paragraph.

Article 63 If any officer of the state organs responsible for the administrative supervision over bidding activities resorts to irregularities for favoritism, abuse of power or neglect of duties, he shall be administratively punished; if any of the acts constitutes a crime, he shall be criminally prosecuted.

Article 64 If a winning bid is held invalid for a project legally subject to bidding due to violations of This law, a bid winner shall be selected according to the provisions of This law from the remaining tenderers, or a new bidding shall be conducted.

Chapter Six Supplementary Provisions

Article 65 If the tenderer or any other interested party believes that a bidding has been conducted in violation of This law, he shall be entitled to raise objections to the tenderer or file a complaint with the relevant administrative departments of supervision.

Article 66 For a project concerned with national security, state secrets, emergency handling, disaster relief, or belonging to special occasions such as the use of poverty alleviation funds or the use of the labor of farmers and is not suitable for bidding, the method of bidding shall not be applied.

人的投标文件订立合同的，或者招标人、中标人订立背离合同实质性内容的协议的，责令改正；可以处中标项目金额千分之五以上千分之十以下的罚款。

第六十条 中标人不履行与招标人订立的合同的，履约保证金不予退还，给招标人造成的损失超过履约保证金数额的，还应当对超过部分予以赔偿；没有提交履约保证金的，应当对招标人的损失承担赔偿责任。

中标人不按照与招标人订立的合同履行义务，情节严重的，取消其二年至五年内参加依法必须进行招标的项目的投标资格并予以公告，直至由工商行政管理机关吊销营业执照。

因不可抗力不能履行合同的，不适用前两款规定。

第六十一条 本章规定的行政处罚，由国务院规定的有关行政监督部门决定。本法已对实施行政处罚的机关作出规定的除外。

第六十二条 任何单位违反本法规定，限制或者排斥本地区、本系统以外的法人或者其他组织参加投标的，为招标人指定招标代理机构的，强制招标人委托招标代理机构办理招标事宜的，或者以其他方式干涉招标投标活动的，责令改正；对单位直接负责的主管人员和其他直接责任人员依法给予警告、记过、记大过的处分，情节严重的，依法给予降级、撤职、开除的处分。个人利用职权进行前款违法行为的，依照前款规定追究责任。

第六十三条 对招标投标活动依法负有行政监督职责的国家机关工作人员徇私舞弊、滥用职权或者玩忽职守，构成犯罪的，依法追究刑事责任；不构成犯罪的，依法给予行政处分。

第六十四条 依法必须进行招标的项目违反本法规定，中标无效的，应当依照本法规定的中标条件从其余投标人中重新确定中标人或者依照本法重新进行招标。

第六章 附则

第六十五条 投标人和其他利害关系人认为招标投标活动不符合本法有关规定的，有权向招标人提出异议或者依法向有关行政监督部门投诉。

第六十六条 涉及国家安全、国家秘密、抢险救灾或者属于利用扶贫资金实行以工代赈、需要使用农民工等特殊情况，不适宜进行招标的项目，按照国家有关规定可以不进行招标。

Article 67 The bidding of a project using funds from international organizations or loans from foreign countries or aid funds and the lender or provider of funds has different provisions concerning the specific conditions or procedure of bidding, such provisions may be applied, but with the exception of those in breach of public interest.

Article 68 This law shall come into effect on January 1, 2000.

第六十七条 使用国际组织或者外国政府贷款、援助资金的项目进行招标，贷款方、资金提供方对招标投标的具体条件和程序有不同规定的，可以适用其规定，但违背中华人民共和国的社会公共利益的除外。

第六十八条 本法自2000年1月1日起施行。

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